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STANLEY MANSFIELD
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Counsel for Petitioners

Supreme Court of the United States

OCTOBER TERM, 1941

No. 1024

TAMPAX INCORPORATED and TAMPAX
SALES CORPORATION

Petitioners

vs.

THE PERSONAL PRODUCTS CORPORATION and
ISIDORE H. SCHWARTZ, trading as HIGHLAND
PHARMACY

Respondents

PETITION FOR REHEARING

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PETITION FOR REHEARING

Now come Tampax Incorporated and Tampax Sales Corporation, the above named petitioners, and respectfully petition for rehearing in the above entitled cause, for the following reason:

The Circuit Court of Appeals of the Second Circuit decides more patent cases than any other Circuit Court of Appeals. The importance attached to its rulings is second only to the importance attached to the rulings of this Court. The ruling of the Circuit Court of Appeals of the Second Circuit for which a review is sought by our Petition for Certiorari is that claims presented in a "continuation-in-part application" which contains an amplified and more detailed disclosure than the original application

are limited to the specific structure disclosed in the amplified disclosure, notwithstanding the broader language of the claims.

Continuation-in-part applications take the place of applications for "patents of addition," which are authorized by the laws of most foreign countries, but for which our laws make no provision.

The disclosure of the original application filed by an inventor is frequently based on his laboratory or experimental shop experience. After it is filed, if his invention goes into actual manufacture, he frequently finds his original disclosure is erroneous or insufficient in part. His remedy is to file a continuation-in-part application amplifying the original disclosure on the basis of his later-acquired knowledge. The new application gets the benefit of the date of the old application for so much of his disclosure as is common to both, and the date of the new application for the new matter.

The continuation-in-part practice is a distinct benefit to the public, as it provides the only way in which an inventor may safely give to the public the full details acquired by his manufacturing experience. If, however, by filing a continuation-in-part application the inventor is limited to a narrow and detailed patent, he will base his claims on his original application and the public will be deprived of the benefits of his more amplified detail specification.

It would be a great benefit to the patent system for this Court to make an authoritative ruling on this important question of continuation-in-part applications. It is particularly important that this be done now, for the reason that the patent statutes are being reviewed by the Senate Committee on Patents with a view to a general revision, and an authoritative ruling by this Court on this question will be most helpful in determining the need for statutory provisions for patents of addition.

For the foregoing reason it is respectfully urged that the Petition for Certiorari be reconsidered, that the order de-

nying the Writ of Certiorari be vacated and that a Writ of Certiorari be issued forthwith to review the decree of the U. S. Circuit Court of Appeals for the Second Circuit heretofore entered in this case.

Respectfully submitted,

H. STANLEY MANSFIELD
W. BROWN MORTON
Counsel for Petitioners

Dated: New York, N. Y.

April 27, 1942.

Certificate of Counsel

I, W. Brown Morton, counsel for the above-named Petitioners, do hereby certify that the foregoing Petition for a rehearing in this cause is presented in good faith and is not filed for delay.

W. BROWN MORTON
Counsel for Petitioners